

2005 WL 6962973 (Vt.Super.) (Trial Pleading)
Superior Court of Vermont.
Orleans County

Lonnie CHESTER, Individually, Administrator of the Estate of Philomena Weingarten,
and as Personal Representative and Agent of the Devisees, Legatees, Beneficiaries
and Heirs-at-Law of Philomena Weingarten, of Warren, Michigan, Plaintiff,

v.

Albert J. WEINGARTEN (a/k/a Albert J. Von Weingarten) and Mary Weingarten (a/k/a Mary
Von Weingarten), of Newport City, Vermont, and East Dennis, Massachusetts, Defendants.

No. 275-10-05 Oscv.
October 28, 2005.

Civil Action

Civil Complaint

Rexford & Kilmartin.

[Duncan Frey Kilmartin](#), Attorney for Defendant.

NOW COMES Plaintiff, Lonnie Chester, by and through his attorneys, Rexford & Kilmartin, and hereby complains against the Defendants as stated:

1. Plaintiff, Lonnie Chester, is a resident of Warren, Michigan. He was appointed Administrator of the Estate of his mother, Philomena Weingarten, by the Orleans Probate Court on October 30, 2003, a copy of which Appointment is attached hereto and made a part hereof as **Exhibit A**, and he continues in that capacity as evidenced by **Exhibit B**, a copy of which is attached hereto and incorporated herein by reference. He is also the personal representative and agent of the devisees, legatees, beneficiaries and heirs-at-law of Philomena Weingarten, who are more particularly described below.
2. Plaintiff appears and complains in the following capacities: individually; as administrator of the Estate of Philomena Weingarten; as personal representative and agent of the devisees, legatees, beneficiaries and heirs-at-law of Philomena Weingarten.
3. The claims which Plaintiff makes herein against the Defendants are claims which survive at common law and under [14 V.S.A. §§ 1451 and 1452](#). The administrator is authorized under [14 V.S.A. § 1453](#) to commence this action and bring these claims.
4. This action and the claims herein are brought for the benefit of the Estate and those persons listed in paragraph 6, with the exception of Albert Weingarten a/k/a Albert Von Weingarten.
5. Philomena Weingarten died December 20, 2001, and was a resident of 742 Highland Ave., Newport, Vermont, at the time of her death. A copy of her death certificate is attached hereto and made a part hereof as **Exhibit C**.
6. The deceased, Philomena Weingarten, left the following heirs-at-law, who *are* also believed to include certain of the devisees, beneficiaries and legatees of her Last Will and Testament and beneficiaries of her *inter vivos* trust:

A. CHILDREN

Anthony Weingarten of Hollywood, Florida, **son**

Henry Weingarten of Hillman, Michigan, **son**

Robert Weingarten of Crossville, Tennessee, **son**

Albert Weingarten a/k/a Albert Von Weingarten, who claimed a dual residence of Newport City, Vermont and East Dennis, Massachusetts, **son**

Juliet Swieczkowski of Georgetown, Texas, **daughter**

Freida Swieczkowski, *deceased daughter*

B. GRANDCHILDREN OF PHILOMENA WEINGARTEN AND CHILDREN OF FREIDA SWIECZKOWSKI

The following are children of the deceased daughter, Freida Swieczkowski, and grandchildren of Philomena Weingarten:

Leann Swieczkowski of Charlotte, North Carolina

Lonnie Chester of Warren, Michigan, also Administrator of the Estate and Plaintiff herein

Lynn Shaffner, Deceased Daughter/Granddaughter

C. GREAT-GRANDSONS OF PHILOMENA, GRANDSONS OF FREIDA SWIECZKOWSKI AND SONS OF LYNN SHAFFNER

The following are great-grandsons/grandsons/sons:

Matthew Shaffner, now or formerly of Bayou Vista Texas

Aaron Shaffner, also now or formerly of Bayou Vista, Texas

7. Defendants Albert J. Weingarten a/k/a Albert J. Von Weingarten, and Mary Weingarten, a/k/a Mary Von Weingarten, husband and wife, claim at various times and for various purposes to be legal residents of the City of Newport, County of Orleans and State of Vermont, and also of the Town of Dennis, Commonwealth of Massachusetts.

8. Defendant Albert J. Weingarten is a putative heir-at-law of Philomena Weingarten, and, upon information and belief, at all times material, was excluded from any benefit in the duly executed *inter vivos* Trust and Last Will and Testament of Philomena Weingarten, which upon information and belief, said Defendant destroyed, when or after he illegally and by false pretenses, masquerading as his brother Anthony, invaded the safety deposit box of Philomena Weingarten located in the State of Michigan, withdrew its contents and thereafter, stole, embezzled, secreted, converted and destroyed money, goods, chattels, bank notes, deeds, writings and other valuable contracts, to purposely injure his mother, his siblings and other heirs and beneficiaries. Upon information and belief, he did the foregoing with the knowledge and actionable participation of Defendant Mary Weingarten.

9. At all times material, Albert Weingarten and Mary Weingarten acted in the following capacities in regard to the claims made herein, Philomena Weingarten and her estate:

- A. As principal and agent of the other
 - B. As partners and joint venturers;
 - C. In concert, conspiracy and by agreement;
 - D. As deceitful, fraudulent and self-appointed fiduciaries and servants of Philomena Weingarten, her *inter vivos* trust and her estate;
 - E. As deceitful, fraudulent and without authorization or consent, guardians and *guardians de son tort* of the person and estate of Philomena Weingarten prior to her death;
 - F. As deceitful, fraudulent and without authorization or consent, attorneys-in-fact and *attorneys-in-fact de son tort* of the person and the estate of Philomena Weingarten;
 - G. Deceitfully, fraudulently and without authorization or consent, exercising the powers of attorney and powers of attorney de son ton) to secure the theft, embezzlement, and conversion of the personal and real property of the decedent, Philomena Weingarten, between 1998 and the date of her death, at the age of 98 years, on December 20, 2001.
 - H. Deceitfully, fraudulently and without authorization or consent, exercising durable powers of attorney and *durable powers of attorney de son tort* for health care, terminal care documents and/or advanced directives.
 - I. Deceitfully, fraudulently and without authorization or consent, exercising powers of attorney, *powers of attorney de son tort*, fiduciaries and *fiduciaries de son tort* in “joint” financial accounts.
 - J. Deceitfully, fraudulently and without authorization or consent, imprisoning the decedent against her will and preventing and inhibiting those who had a natural and legal interest in Philomena Weingarten from contact, communications and obtaining necessary information relative to the wellbeing of Philomena Weingarten and her estate.
10. After Philomena's death, Defendants acknowledged that they were acting as *executors de son tort* in regard to the estate of Philomena, and declared that they were holding at least \$187,000 of Philomena's assets as de facto administrators of the estate. In January or February of 2002, approximately two months after Philomena Weingarten died, Anthony, her son, called Albert for an accounting. Albert stated he was holding \$187,000 for the estate. He refuses to pay said sum to the estate.
11. After Philomena's death, Defendants acknowledged that they were acting as *attorneys-in-fact de son tort* in regard to the estate of Philomena, and declared that they were holding at least \$187,000 of Philomena's assets as de facto administrators of the estate.
12. At all times material from April of 1998 to the date of Philomena's death in December of 2001, and thereafter to date, Defendants, as trustees/*trustees de son tort*, executors/*executors de son tort* and administrators/*ac/m/n/sfrators de son tort*, *fiduciaries/fiduciaries de son tort* and attorneys-in-fact/*attorneys-in-fact de son tort*, engaged in the following illegal, fraudulent and tortious activities in regard to Philomena Weingarten, her person, her estate, her *inter vivos trust* and her Last Will and Testament:
- A. Breach their fiduciary duties to Philomena, her estate, her *inter vivos trust*, her Last Will and Testament, and the lawful and rightful beneficiaries of her *inter vivos trust* and estate;
 - B. Acted in bad faith and against the interest of the principal, her intent and desires;

- C. Engaged in self-dealing;
- D. Engaged in actual conflicts of interest which impaired the ability of the Defendants to act in the interest of the principal;
- E. Co-mingled the funds of the principal with their own funds and the funds of third parties;
- F. Failed to exercise the degree of care that would be observed by a prudent person dealing with the property and affairs of another person;
- G. Embezzled from Philomena Weingarten and her estate;
- H. Stole from Philomena Weingarten and her estate;
- I. Converted the property of Philomena Weingarten and her estate to their own use and benefit and the benefit of unknown third parties.
- J. Engaged in false pretenses, trickery, deceit, fraud and cheating.
- K. Falsely imprisoned her, held her against her will, and prevented others having a legal and natural interest in Philomena Weingarten to have communications and contact with her.

13. The Probate Court of the District of Orleans held evidentiary hearings on May 12, 2005 and July 11, 2005, on the Motion of Lonnie Chester, Administrator, to compel Albert Weingarten to turn over and disclose estate assets, and on Albert Weingarten's Motion dated May 3, 2005, to remove the Administrator for failing to diligently research any alleged estate. Albert Weingarten appeared *pro se*, and was examined by the Administrator's attorney on May 12, 2005, but was unable to complete his examination of Albert on July 12, 2005, because Albert intentionally failed to attend the hearing.

14. The Orleans Probate Court, Judge John P. Monette, presiding, made Findings of Fact based upon the evidence introduced at the hearing on September 1, 2005. A certified copy of the Decision and Order, including the Court's 67 Findings of Fact are incorporated herein by reference as if set forth in full, as **Exhibit D**. [V.R.C.P. 10\(c\)](#).¹

15. In 1994, daughter Juliet Swieczkowski, of Georgetown, Texas, a registered nurse, recognized that her mother was starting to decline mentally and becoming forgetful. See paragraph 22 of **Exhibit D**. Other family members were also observing the decline.

16. By letter dated December 27, 1997, Defendant Albert Weingarten wrote, although the letter is believed to have been typed by Defendant Mary Weingarten, Juliet Swieczkowski about Philomena Weingarten's incapacity and incompetency, and claimed that she was not capable of making rational decisions currently or for a long time before. Paragraph 31 of **Exhibit D** and **Exhibit E**, a true copy of the letter of December 27, 1997.

17. **Exhibit E**, authored by the Defendants, is incorporated herein by reference as if set forth in full. It consists of a series of accusations made by the Defendants against several of the heirs-at-law and siblings of the Defendant Albert Weingarten, accusing them of fraudulent and illegal activity against Philomena and her estate. The letter accurately describes the illegal conduct which the Defendants engaged in subsequent to April 1998 and constitutes a blueprint of their conduct after they, by trickery, deceit and false pretense, carried Philomena to Vermont against her will, and held her in virtual captivity.

18. The dementia was evident and progressive from 1986 to 1998, and Albert agreed to apply for and obtain a guardianship because everyone recognized, and he admitted, that Philomena was incompetent and incapable. Albert assured Juliet

Swieczkowski that he would be accountable and document his guardianship. He never applied for guardianship of Philomena in any jurisdiction. **Exhibit D, paragraphs 34 - 36. Exhibit E.**

19. In April of 1998, Albert and Mary went to Michigan for the purpose of moving Philomena from Michigan to Vermont, against her will and to hold her in virtual captivity. After moving Philomena to Vermont against her will, Defendants obtained control of her assets by trickery, deceit, larceny, conversion, false pretenses and the preparation of false and fraudulent documents, at a time when they knew that Philomena Weingarten was incompetent to manage her own affairs, or to make intelligent decisions concerning herself and her property. The assets had an aggregate value of between \$180,000 and \$250,000, including bank accounts, her home in Michigan, its contents and life insurance. **Exhibit D, paragraphs 38, 43.**

20. On December 8, 1998, Defendants falsely, fraudulently, deceitfully and by false pretense secured a power of attorney allegedly signed Philomena Weingarten, at a time when Philomena Weingarten was known to the Defendants to be incompetent to execute any documents, in the presence of two witnesses, Lina Cerriell and Mark M. Stewart, apparently in the state of Massachusetts, and had the same notarized by Nancy A. Glass in the County of Worcester, Commonwealth of Massachusetts. This was facially a *general power of attorney*, which is known to have been used by the Defendants to sell the property of Philomena Weingarten at 5026 Gerald, Warren, Michigan.

21. On the 7th day of December, 1998, Defendants also falsely, fraudulently, deceitfully and by false pretense caused Philomena Weingarten, at a time when Philomena Weingarten was known to the Defendants to be incompetent to execute any documents, to execute a quit-claim deed quit-claiming her interest, as trustee, in the Philomena Weingarten Revocable Trust Agreement dated October 26, 1988. She conveyed this to herself individually.

22. The Revocable Trust Agreement and her Last Will and Testament, were, upon information and belief, in the safety deposit box which Defendants illegally invaded, and the Trust instrument came into the possession of Defendants in an illegal manner.

23. The sale netted \$113,365.09 to Philomena Weingarten, and the same was given to Albert J. Weingarten, as attorney-in-fact and fiduciary for Philomena Weingarten. The same was stolen, embezzled, converted and obtained in self-dealing by the Defendants.

24. Defendants engaged in a plan, scheme and pattern of illegal conduct more particularly described herein, which had as its aim and goal the theft, conversion and embezzlement of all of the assets of Philomena Weingarten to the Defendants, and the intentional injury and damage to Philomena Weingarten, her children and grand children, and the same was accomplished by egregious, malicious, spiteful and vengeful means.

25. A part of the scheme was to create a series of false identities for the Defendants, and to shift between residences as well as maintain dual legal residences in Newport, Vermont and East Dennis, Massachusetts.

26. As part of the scheme, they registered Philomena Weingarten both before and after her death as a voting resident of East Dennis, Massachusetts, although she was a legal resident of the City of Newport, Vermont.

27. While totally incompetent, and a legal resident of Newport, Vermont, the Defendants fraudulently caused Philomena Weingarten, known to Defendants to be incompetent, to vote in a Massachusetts state election on November 7, 2000, and in a state primary on March 7, 2000, which she was a legal resident of Vermont.

28. Defendant Albert Weingarten voted in ten Massachusetts elections between September 17, 1996 and November 5, 2002, while also voting in Newport, Vermont under an alias.

29. Albert Weingarten, masquerading as Albert Von Weingarten, in order to avoid detection, took the Vermont Freeman's oath in March of 1993 in the City of Newport, and voted thereafter in the City of Newport. He also claimed residential taxable homesteads in Newport, Vermont and East Dennis, Massachusetts.

30. Further proof of the Defendants' scheme and pattern of defrauding, false pretenses and the like, is evidenced by the fact that the Defendants' oldest son, Albert, 53-years of age, is deaf, mentally retarded and physically handicapped, and according to the Defendants, in need of fulltime care. Notwithstanding Albert's condition, upon information and belief, Albert Weingarten voted regularly in Massachusetts.

31. As part of the scheme and pattern to defraud and engage in other illegal activities set forth herein, Defendants, in order to confuse and create disguises of identity, used the last names of "Von Weingarten" or "Weingarten", which until recently provided some form of "cover" and misdirection for their illegal activities.

32. As of May 12, 1998, Robert Primeau, M.D., made an assessment that indicated that Philomena was suffering from moderate to severe dementia, could not answer even simple questions, and constantly asked whether she could return home. **Exhibit D, paragraph 42.**

33. Notwithstanding her severe dementia, Albert and his wife Mary forced his mother to execute documents which she was incapable of executing, that allowed Albert and Mary to obtain the benefit of Philomena's estate. **Exhibit D, paragraphs 43-51.**

34. In order to isolate his mother and prevent her other children and grandchildren from verifying his claims or seeing her directly, Albert and Mary cut off all contact with Philomena, claiming she had given up her hearing aid and glasses. On one occasion after Philomena's move to Vermont in the spring of 1998, Juliet Swieczkowski was able to speak with her once by phone. Philomena was confused and did not know where she was or who she was with, but the phone was taken away by one of the Defendants, or their agents, before the conversation concluded. At about the same time, Lonnie Chester, Philomena's grandson, had come from Michigan to try to visit Philomena in person, but was turned away by Albert and Mary without seeing Philomena. Albert and Mary cut off Philomena from all contact with family members in order to hide and conceal their wrongful and illegal actions regarding Philomena and her estate. See **paragraphs 41, 45, 47, 69.**

35. Commencing in April of 1998 and at all times material thereafter, Defendants Albert and Mary Weingarten, jointly and severally, were persons who concealed, embezzled, converted, secreted and conveyed away the money, goods, chattels and real estate of the deceased.

36. Commencing in April of 1998, and at all times material thereafter, Defendants Albert and Mary Weingarten, jointly and severally, were persons who had possession and knowledge of deeds, contracts and other writings that contained evidence of, and tended to disclose, the right, title, interest or claim of Philomena Weingarten, her estate, and the administrator thereof, to real and personal estate, her *inter vivos* trust and her Last Will and Testament, which, upon information and belief, one or both of the Defendants knowingly and intentionally destroyed.

37. Between April of 1998 and September of 2002, approximately nine (9) months after Philomena died on December 20, 2001, Defendants knowingly and intentionally stole, embezzled, converted, secreted and alienated the monies, goods, chattels, effects and real estate of Philomena Weingarten before the granting of the administration of the estate.

38. From April of 1998 to the death of Philomena Weingarten on December 20, 2001, Defendants Albert and Mary Weingarten were the self-appointed guardians (*guardians de son tort*) of the person and estate of Philomena Weingarten, and assumed fiduciary responsibilities in regard to Philomena and her estate, which they knowingly and intentionally breached.

39. After voluntarily appointing themselves as fiduciaries and servants of Philomena Weingarten, Defendants Albert and Mary embezzled, fraudulently converted to their own use and secreted with intent to steal, embezzle and fraudulently convert to their

own use, money and other property which came into their possession and was under their care by virtue of their relationship and employment with Philomena Weingarten.

40. Albert Weingarten and Mary Weingarten, Defendants, stole from the actual and constructive possession of Philomena Weingarten money, goods, chattels, bank notes, deeds and writings containing a conveyance of land, to a value unknown, but believed to be approximately at least \$180,000 between April of 1998 and December 2001, Thereafter, they stole, embezzled, converted and secreted things to a value unknown. The total value of Philomena's property that was wrongfully taken and obtained by the Defendants is believed to be \$279,592.58.

41. Defendants wilfully, intentionally, maliciously, wantonly, spitefully, and with egregious ill will directed toward Albert's mother, Philomena, his siblings and heirs-at-law of Philomena, engaged in the illegal actions more particularly described *infra*. Defendant Albert Weingarten's testimony and written filings with the court addressed to the issues raised by the administrator and other family members evidences the foregoing and consists of untruthful, malicious, slander, libel and ad hominem attacks which never address the issues relating to Defendants' relationship to Philomena and her estate. All filings made by the Defendants, Albert and Mary Weingarten, in connection with the Motions from which **Exhibit D** resulted, are incorporated by reference. See **Exhibit D, paragraphs 63 - 65**.

42. Defendants' illegal actions violated all community norms and standards, and were calculated to inflict great emotional harm on Philomena, as well as her children, grandchildren and great-grandchildren.

COUNT I

(Larceny)

43. The general allegations, paragraphs 1 - 42, are incorporated by reference as if fully set forth herein.

44. Defendants maliciously, wilfully, wantonly, intentionally and wrongfully committed larceny against the person and estate of Philomena Weingarten, and as a result thereof, Philomena and her estate have been injured and damaged thereby.

COUNT II

(Conversion)

45. The general allegations, paragraphs 1 -42, are incorporated by reference as if fully set forth herein.

46. Defendants maliciously, wilfully, wantonly, intentionally and wrongfully converted Philomena Weingarten's personal and real property, and as a result thereof, Philomena and her estate have been injured and damaged thereby.

COUNT III

(Embezzlement)

47. The general allegations, paragraphs 1 - 42, are incorporated by reference as if fully set forth herein.

48. Defendants maliciously, wilfully, wantonly, intentionally and wrongfully embezzled Philomena Weingarten's personal and real property, and as a result thereof, Philomena and her estate have been injured and damaged thereby.

COUNT IV

(Fraud, False Pretenses, Trickery, Deceit and Cheating)

49. The general allegations, paragraphs 1 - 42, are incorporated by reference as if fully set forth herein.

50. Defendants maliciously, wilfully, wantonly, intentionally and wrongfully obtained Philomena Weingarten's real and personal property by fraud, false pretenses, trickery, deceit and cheating, and as a result thereof, Philomena and her estate have been injured and damaged thereby.

COUNT V

(Secreting Assets)

51. The general allegations, paragraphs 1 - 42, are incorporated by reference as if fully set forth herein.

52. Defendants maliciously, wilfully, wantonly, intentionally and wrongfully secreted the assets and real and personal property of Philomena Weingarten and her estate, and as a result thereof, Philomena and her estate have been injured and damaged thereby,

COUNT VI

(Guardianships & *Guardianships de son tort*)

53. The general allegations, paragraphs 1 -42, are incorporated by reference as if fully set forth herein.

54. Defendants maliciously, wilfully, wantonly, intentionally and wrongfully acted as guardians and *guardians de son tort*, and as more particularly aforesaid, breached their fiduciary duties in regard thereto, and as a result thereof, Philomena and her estate have been injured and damaged thereby.

COUNT VII

(Attorneys-in-fact & *Attorneys-in-fact de son tort*)

55. The general allegations, paragraphs 1 - 42, are incorporated by reference as if fully set forth herein.

56. Defendants maliciously, wilfully, wantonly, intentionally and wrongfully acted as attorneys-in-fact and *attorneys-in-fact de son tort*, and as more particularly aforesaid, breached their fiduciary duties in regard thereto, and as a result thereof, Philomena and her estate have been injured and damaged thereby.

COUNT VIII

(Executors/Administrators & *Executors/Administrators de son tort*)

57. The general allegations, paragraphs 1 - 42, are incorporated by reference as if fully set forth herein.

58. Defendants maliciously, wilfully, wantonly, intentionally and wrongfully acted as executors/administrators and *executors/administrators de son tort*, and as more particularly aforesaid, breached their fiduciary duties in regard thereto, and as a result thereof, Philomena and her estate have been injured and damaged thereby.

COUNT IX

(Fraud and Undue Influence)

59. The general allegations, paragraphs 1 - 42, are incorporated by reference as if fully set forth herein.

60. Defendants maliciously, wilfully, wantonly, intentionally and wrongfully took unconscionable advantage of Philomena Weingarten, an incompetent adult, and their conduct violated all community standards relating to the care and custody of an infirmed and incompetent parent. Through their fraud, undue influence and every other unconscionable stratagem, device and activity which they used, they caused injury and damage to Philomena and her estate.

COUNT X

(Deprivation of Appropriate Health Care)

61. The general allegations, paragraphs 1 -42, are incorporated by reference as if fully set forth herein.

62. Defendants, acting as agents and attorneys-in-fact for Philomena in regard to her health care, maliciously, wilfully, wantonly, intentionally and wrongfully deprived her of appropriate health care.

63. As a result thereof, Philomena was injured and damaged thereby.

COUNT X

(False Imprisonment)

64. The general allegations, paragraphs 1 - 42, are incorporated by reference as if fully set forth herein.

65. Defendants maliciously, wilfully, wantonly, intentionally and wrongfully held Philomena captive, imprisoned her against her will and prevented her children, grandchildren and great-grandchildren from access to her, and cut off and controlled all appropriate outside communications, including appropriate communications with and treatment by health care providers.

66. As a result of the aforesaid conduct of the Defendants, Philomena and her estate were injured and damaged thereby.

COUNT XI

(Trespass)

67. The general allegations, paragraphs 1 - 42, are incorporated by reference as if fully set forth herein.

68. Defendants maliciously, wilfully, wantonly, intentionally and wrongfully engaged in a pattern of and continuing trespasses to the real and personal property interests of Philomena Weingarten and her estate, and as a result thereof, Philomena Weingarten and her estate were injured and damaged thereby.

COUNT XII

(Tort of Outrage)

69. The general allegations, paragraphs 1 - 42, 44, 46, 48, 50, 52, 54, 56, 58, 60, 62 - 63, 65 - 66 and 68 are incorporated by reference as if fully set forth herein.

70. Defendants maliciously, wilfully, wantonly, intentionally and wrongfully violated all community standards and committed the tort of outrage, and inflicted, with ongoing actual malice of the most egregious nature, severe emotional harm upon the following;

A. Philomena Weingarten;

B. Juliet Swieczkowski, her daughter;

C. Henry Weingarten, her son;

D. Robert Weingarten, her son;

E. Anthony Weingarten, her son;

F. Lonnie Chester, her grandson and administrator of her estate;

71. As a result thereof, the foregoing have been injured and damaged thereby.

PRAYERS FOR RELIEF

Plaintiff demands judgment against the Defendants as follows:

A. A mandatory preliminary and permanent injunction requiring Defendants to provide the administrator with a complete accounting and to turn over to the administrator all assets, or their equivalent value in money, of the estate of Philomena Weingarten.

B. Compensatory damages in a just and fair amount, not to be less than the value, together with interest, of all of the assets of Philomena's estate on and subsequent to April 1, 1998, in regard to the claims made by her Administrator on behalf of her estate.

C. Twice the value of all assets secreted, converted or embezzled subsequent to December 20, 2001, the date of the death of Philomena Weingarten, and in a sum not less than \$374,000, twice the amount that Defendant Albert Weingarten admitted to Anthony Weingarten that he was holding in trust for the benefit of the estate after Philomena Weingarten died. [14 V.S.A. § 1553](#).

D. Compensatory damages for larceny, conversion, embezzlement, fraud, false pretenses, trickery, deceit, cheating and secreting assets.

E. Compensatory damages for breach of fiduciary and other duties.

F. Compensatory damages for breach of fiduciary duties and deprivation of appropriate health care.

G. Compensatory damages for false imprisonment.

H. Compensatory damages for trespass.

I. Compensatory damages for outrage and the intentional infliction of emotional harm.

J. Punitive damages as appropriate.

K. Damages and expenses incurred by the administrator and the estate in discharging the administrator's responsibilities and bringing this action.

L. Attorney's fees.

M. Interest and costs.

N. Such other relief as is just.

Plaintiffs Demand Trial by Jury.

Dated at Newport, Vermont, this 28th day of October, 2005.

REXFORD & KILMARTIN

BY <<signature>>

DUNCAN FREY KILMARTIN

Attorney for Defendant

Footnotes

- 1 Each numbered paragraph of the Court's 67 Findings of Fact constitutes an allegation herein, in addition to the other allegations, and should be responded to under the requirements of [V.R.C.P. 8-10](#).